IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 2ND JANUARY 2007 / 12TH POUSHA 1928

Crl.M.C.No. 170 of 2006

ORDER IN CRL.M.PETITION NO.1127/04 IN S.T.1664/03 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT I, PUNALUR

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PETITIONER:

M.BABY, S/O.MATHEW,
AGED 62 YEARS,
BABY QUARTERS, KULAKKAD PANCHAYAT,
PUTHUR VILLAGE.

BY ADV. M.P.ABRAHAM(SR)
ABEESH JOSE.

RESPONDENTS:
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1. STATE OF KERALA REP. BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

2. JACOB.G,
PUTHEN VEEDU,
MANALIL.P.O,
AYRANELLOOR VILLAGE.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISCELLANEOUS CASE HAVING COME UP FOR ADMISSION ON 02/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.170 of 2006

Dated this the 2nd day of January, 2007

ORDER

The petitioner faces indictment in a prosecution under Section 138 of the N.I Act. The trial has started and the matter is at the defence stage now. At the defence stage, the petitioner wanted the cheque to be sent to the expert for comparison of signature. The learned Magistrate by the impugned order has rejected the prayer. The petitioner has hence come to this Court with this Crl.M.C.

2. A revision petition is not maintainable, the order impugned being an interlocutory order. Normally the petitioner must therefore wait to challenge the order along with the final order/judgment, which is to be passed in the prosecution under Section 138 of the N.I Act. The petitioner has rushed to this Court with this petition under Section 482 Cr.P.C to assail the order passed by the learned Magistrate.

3. I shall scrupulously avoid any expression of opinion which would prejudice the interests of the petitioner and disable him to challenge the impugned order, if necessary along with

the judgment to be passed in the prosecution by the learned Magistrate. I shall confine myself to the consideration whether powers under Section 482 Cr.P.C can, need or ought to be invoked in favour of the petitioner at this stage to interfere with the impugned order.

4. The impugned order reveals that the petitioner accepts that the cheque was handed over by him as security to another person. The learned Magistrate took note of the fact that inherently the plea that a blank unsigned cheque was handed over as security does not stand to reason and logic. The learned Magistrate further observed that in the cross examination of the complainant, no specific dispute about the signature was raised. The learned Magistrate further noted that in the 313 statement also, no specific denial of signature had been raised. The learned Magistrate did also observe that the notice of demand under Section 138 of the N.I Act was not replied to at all.

5. The above circumstances do compellingly suggest to me that this is not a fit case where the extraordinary inherent jurisdiction available to this Court under Section 482 Cr.P.C can or need be invoked.

6. This Crl.M.C is, in these circumstances, dismissed. I may however hasten to observe that the dismissal of this Crl.M.C will not in any way fetter the rights of the petitioner to raise all appropriate and relevant contentions before the learned Magistrate in the course of the trial. Any observation made by the learned Magistrate in the impugned order or observations made by this Court in this order shall not fetter the rights of the petitioner to raise such contentions. The learned Magistrate must consider all such contentions on merits uninfluenced by such observations in this order and the impugned order.

7. Hand over a copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

rtr/-